

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition of Triangle  
Transportation Co, Inc. for Charter Carrier  
Permit Authority Within a 50-Mile Radius  
of East Grand Forks, Minnesota.

FINDINGS OF FACT, CONCLUSIONS  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis in East Grand Forks and Crookston, Minnesota, respectively, on May 10 and May 11, 1995. Additional testimony was taken at Crookston on May 17 and May 18, 1995, dates on which the Administrative Law Judge heard a companion matter (Petition of Lange Transport, Inc., OAH Docket No. 7-3001-9618-2, TRB Docket No. CH 57484/E-94-811, Sub. 3, Report issued under separate cover).

Thomas J. Van Osdel, Van Osdel and Miller, Ltd., P.O. Box 2943, Fargo, ND 58108, appeared on behalf of Triangle Transportation Co. Inc. ("Petitioner", "Triangle"). Gene P. Johnson, c/o Gene P. Johnson, Ltd., P.O. Box 2471, Fargo, ND 58108, appeared on behalf of the Protestants - Carpenter Charter, Inc. ("Carpenter"), Jutz, Inc., d/b/a Bemidji Bus Lines ("Bemidji", "Jutz") and Lange Transport, Inc. ("Lange"). The record in this matter closed on October 11, 1995.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

### STATEMENT OF ISSUE

Whether Charter Carrier Permit Authority should be granted to Triangle Transportation, Co., Inc. to transport passengers under charter from points within a 50-mile radius of East Grand Forks, Minnesota, to points in Minnesota and return?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. Triangle Transportation Company, Inc., based both in Grand Forks, North Dakota and East Grand Forks, Minnesota, operates motor coaches on three regularly-scheduled lines and under charter throughout the country, especially the eastern half of the United States. These operations are performed with 10 buses, six of which have 47 seats, one with a capacity of 41 and three with 39 seats.

2. Triangle operates regularly-scheduled buses between Grand Forks and Winnipeg, via Pembina, North Dakota, between Grand Forks and Minot, North Dakota along US Highway 2 and between Grand Forks and the Minneapolis-St. Paul International Airport, via Fargo, North Dakota. The regularly-scheduled bus trips originate and terminate at the company-owned bus station in Grand Forks, North Dakota.

3. Most of Triangle's charter trips originate and terminate in East Grand Forks, where the Petitioner maintains a garage and maintenance facility for its buses, with an adjoining parking lot. The larger lot provides more convenient parking for charter passengers, who commonly gather at that central point after a commute from their homes.

4. Triangle has Interstate Special charter passenger service authority from the US Department of Transportation to operate charters throughout the United States, from points in Minnesota, North Dakota, South Dakota and Wisconsin, as well as intrastate charter authority from North Dakota. It has no intrastate charter authority within Minnesota, but had been operating charters within Minnesota since the late 1960's, as authorized by the "incidental" charter authority granted to it as part of its authority to operate regularly-scheduled bus service between East Grand Forks and Duluth via US Highway 2. That regular route was abandoned by Triangle on December 30, 1994. While in effect, the authority granted to the Petitioner (RRCC 14/E-94-540) allowed it, in part, "to transport passengers under charter from points located in the counties served

under Route One described above (East Grand Forks - Duluth, via Highway 2) to all points in Minnesota, and return”.

5. The counties covered in the “incidental charter” authority noted in the preceding Finding are Polk, Red Lake, Clearwater, Beltrami, Hubbard, Cass, Itasca and St. Louis. The 50-mile radius from East Grand Forks sought as origin and termination points for charters within this petition includes western Polk and Red Lake Counties (“holdover” territories from the incidental authority that has been abandoned), western Marshall and Pennington Counties, northwest Norman County and a small portion of south-southwestern Kittson County. The larger communities in the territory sought are East Grand Forks and Crookston (the county seat) in Polk County and the county seat towns of Red Lake Falls (Red Lake County), Warren (Marshall County) and Thief River Falls (Pennington County).

6. Triangle retained the authority to operate intrastate charters from the counties along Highway 2, from the time it abandoned the regular route along that road through October 6, 1995. Triangle decided to take the abandonment action late in 1994 because it was losing significant amounts of money by maintaining the operations, which did not generate sufficient passenger revenues to cover the expenses involved to run buses on a regular schedule along Highway 2. This Petition was filed because Triangle wants to retain the charter business it had operated “incidental” to the regular route service in the area relatively close to East Grand Forks, from which most of its Minnesota charter business had been generated during the decades it operated buses along Highway 2. During the latter years of operating the regularly-scheduled buses along Highway 2, the charters operated “incidentally” to the operation of the regular service actually brought in more revenues and, in effect, subsidized the regular route operation along the route.

7. In April of 1995, Triangle filed a request with the Transportation Regulation Board to abandon its regular route between East Grand Forks and Duluth. The request was made in response to an Order to Show Cause why the Authority should not be stripped because of Triangle’s abandonment of the route. Triangle had abandoned the route without prior permission from the Board because its counsel did not perfect in advance the filing of a request for abandonment.

8. On October 6, 1995, the Transportation Regulation Board followed an oral vote taken on August 23, 1995 by issuing an Order of Abandonment/Order to Dismiss Order to Show Cause. The October 6, 1995 Orders specified that Triangle was authorized to abandon and discontinue regular route passenger service between East Grand Forks and Duluth via Highway 2, and ordered further that with the abandonment approved therein, that Triangle was allowed to continue providing transportation between Moorhead and Minneapolis via Interstate Highways 94 and 694 to serve the points of Fergus Falls, Alexandria, Sauk Centre, St. Cloud and the Minneapolis/St. Paul International Airport, and Ordered further that Triangle is, after that date, restricted against providing incidental charter service under any regular route certificate.

9. Triangle’s ten buses are maintained regularly and are in safe condition. On December 8, 1994, the last time the Petitioner’s buses were inspected by Federal authorities (November 18, 1994), the Federal Highway Administration of the US

Department of Transportation issued a "Satisfactory" motor carrier safety rating to Triangle.

10. Before employing any driver, Triangle requires the potential employee to be tested for controlled substances. It has imposed this testing since before the time such testing was made mandatory for passenger bus companies.

11. The Statement of Assets and Liabilities attached to the initial Petition in this matter filed on November 14, 1994 reported a negative net worth for Triangle in the amount of \$131,288. That fact, standing alone, does not lead to a conclusion that the Petitioner is financially unfit and unable, for reasons noted in Findings 12 and 13.

12. Triangle, or its predecessor entities, began operating in the bus business in 1921. Between approximately 1947 and 1992, Triangle was operated by Lewis Pierce. The company is operated currently by its President, Leon Pierce. For many years, until the time of his death in 1992, Lewis Pierce (Leon Pierce's father) owned all the shares of Triangle's common stock. Luaine Pierce (Lewis's widow and Leon's mother) inherited the common stock and subsequently sold 35 of the 37 shares to the corporation and two to Leon Pierce.

13. In connection with re-acquisition of the 35 shares, the corporation assumed an obligation to pay Mrs. Pierce approximately \$260,000, a negative figure to be carried on its books (as "Premium Paid to Reacquire Stock") until the debt to Mrs. Pierce is paid in full. This figure, counted as a liability in the Statement of Assets and Liabilities filed initially, depresses the corporation's net worth artificially in light of other relevant financial factors such as Triangle's profitability as an operating entity, the additional liability representing the amount yet due to Luaine Pierce to complete the sale of the stock (\$248,706.36 as of March 1, 1995), and the fact that the company's buses are worth much more in terms of fair market value than the book value after depreciation figures used in the financial statements.

Applicant's Exhibit 3 (Triangle's Financial Statements as of March 31, 1995) indicates a book value (assets minus accumulated depreciation) of under \$200,000 for Triangle's buses, as well as loans that have been granted to the company (with the buses as collateral) with repayment amounts carried as liabilities of over \$350,000. Assuming prudent financial institutions would not extend loans in amounts greater than the fair market value of collateral, the fair market value of the buses is understated in the Statement of Assets and Liabilities showing the negative net worth (Affidavit of Dwight C. Anderson, submitted for the record on August 14, 1995 by request of the Administrative Law Judge).

The Petitioner is fit and able financially to conduct the operations proposed to be authorized in its Petition.

14. Valley Truck Parts of East Grand Forks has a need to charter buses periodically for trips it provides for representatives of its vendors. It has used Triangle for these charters to travel to Winnipeg, the Twin Cities and Mahanomen (location of a gaming casino). Valley Truck Parts is very satisfied with the service presented by Triangle. Its Vice President, Doug Runyan, is impressed especially by the cleanliness

of the buses and professionalism of Triangle's drivers. Runyan is not aware that other charter companies "serve" East Grand Forks.

15. Robert Bagley manages American Legion Post #157 in East Grand Forks. He arranges charters for the post, which trips include intrastate Minnesota travel to Mahanomen, Duluth, Rochester and the Twin Cities. Bagley needs intrastate bus charter transportation two or three times per year for the Legion Post, and knows of no other companies than Triangle who can provide that service to businesses in East Grand Forks.

16. Jim Richter is the Executive Director of the East Grand Forks Economic Development Authority. The Authority is aware of Triangle as an active entity in and contributor to the business climate in East Grand Forks, but has never heard of any of the Protestants.

17. Cynthia Pic, a co-owner of West-Pic Travel in Niagara, North Dakota, arranges many charter trips from communities in the territory sought to be served by Triangle. Pic has helped to arrange 50-70 charter trips, with Triangle as the carrier, in the last seven years. Many of them were intrastate (most of the time to the Twin Cities for sports events, cultural activities or Mall of America shopping, as well as trips to Duluth and Mahanomen) with most of those charters originating in East Grand Forks. West-Pic has not been solicited by any of the Protestants. Pic has noticed that Triangle's equipment is always clean and well-maintained. Its drivers are timely and dependable and act in a courteous, well-mannered fashion, especially to the senior citizens who make up a large portion of West Pic's charter customers. Even though Triangle's rates may be higher than those of some of the Protestants, Pic believes the superior quality of service provided by the Petitioner outweighs the risks involved in trying someone else.

18. Michael Pierce is President of Dakota Peat Blenders in East Grand Forks. The company has a need for intrastate charter bus services approximately two to three times a year in order to facilitate entertainment for its employees and customers. Typical destinations are the Mahanomen casino, Lake of the Woods for fishing, company demonstration fields at Fisher, Newfolden and Middle River, and general travel for a day in a "party bus". The company has never been solicited by the Protestants for such business, and has heard only of Carpenter Charter as a competitor of Triangle. Michael is Leon Pierce's first cousin.

19. Marvin Bachmeier is the Athletic Director at University of Minnesota-Crookston in Crookston. The athletic department has a need for transportation by charter bus of its football and hockey teams and for the men's and women's basketball teams whenever the men and women travel to play at a common destination. The school, which recently changed from a two-year to a four-year institution, also is changing conference affiliation as a result. Many of the opponents are schools located in neighboring states, but Mr. Bachmeier still foresees a need for transportation from Crookston to Minnesota destinations such as the Twin Cities, Bemidji, Northfield, Moorhead, Duluth and Morris. Bachmeier has used Triangle in the past and is very pleased with the quality of its service. Contracts are awarded to transport the school's athletic teams on a "per season" basis in each sport. The contracts are awarded

pursuant to a bidding process through an office on the main Twin Cities campus of the University, a process to which Bachmeier has input, but he cannot make the ultimate decision.

20. Mary Tiedeman is Operations Officer at the First American National Bank in Crookston. The bank has organized the Prime American Senior Citizens Club for its customers over age 50, and Tiedeman arranges charter transportation for club travel events within Minnesota two or three times each year. Common destinations are the Twin Cities, Itasca Park, Grand Rapids and various gaming casinos. The bank's primary concern regarding a charter carrier are that the equipment be safe, clean and accessible to people with disabilities and that the drivers be friendly and courteous. Tiedeman finds all those qualities in the charter carriers she has used for these trips - Triangle.

The charters arranged by the bank include customers of affiliated banks in the towns of Warren, Fisher and Shelly. If 10 or more trip customers are in one of those communities instead of Crookston, Tiedeman would like to have them picked up and returned separately at those locations. The bank has not been contacted by any Protestant, or any other carrier besides Triangle, to solicit potential charter business. Even if another carrier offers lower rates, Tiedeman desires to continue the arrangement with Triangle, a customer of her bank.

21. Joan Clemenson is Treasurer of Crookston's Eagles Club Auxiliary and a committee member of the Club's Bowling Committee. In those capacities, she is involved in arranging charter bus travel. The Crookston Eagles need charter bus transportation each year for travel to bowling tournaments at various locations in Minnesota (Twin Cities, Albert Lea, Grand Rapids, Stillwater, Waseca, Willmar). They have used Triangle for their charters, and are pleased with the service, which Clemenson notes is always prompt and friendly. Triangle's buses have been clean and neat for the Eagles Club charters. The Crookston Eagles have not been approached by any other carriers to provide the necessary service.

22. Barbara Reitmeier is Council President of the various Homemakers Clubs that make up the West Polk County Homemakers. In that capacity, she has arranged yearly charters for the Council over the last 12-15 years. Charter trips have gone outside Minnesota as well, but intrastate trip destinations have included the Twin Cities, Stillwater, Pipestone, Hastings, Red Wing and Winona. The Council is very pleased with Triangle's service, which it finds to be prompt and courteous, and with the cleanliness of Triangle's equipment. Reitmeier believes that if Triangle cannot fill the Homemakers' charter transportation needs, they "may just quit touring" (Tape, Side 6).

23. One of the Homemakers' annual charter trips, to the "House on the Rock" in southern Wisconsin, was provided by Lange Transport, a Protestant in this matter. Ms. Reitmeier arranged the transportation with Lange because Triangle was booked. The Lange bus used for the trip was dirty, having not been cleaned properly as of the time of pickup. Complaints included that the bus was slightly late, the floor was full of gravel, gum was stuck to the seats, the air conditioning did not work, the windows did not open, a traveler picked up a grease stain on her clothing while using the bus bathroom and that the bathroom smelled bad. The driver, Lange's President Lugene Lange, fixed the

air conditioning at the lunch stop in Fergus Falls and cleaned up the rest of the problems at the first overnight in LaCrosse, Wisconsin.

24. Annette Bergan is General Manager and Chief Financial Officer of Bergan Travel in Thief River Falls. She and her husband, Bob Bergan (who works part-time at the agency) own the business. Ms. Bergan arranges charter bus transportation for her customers.

Bergan Travel has been operating for 18 years. During that time, a working arrangement has developed with West-Pic Travel for the sponsorship of tours requiring the use of charter buses, and Bergan also sponsors charter bus trips itself. Bergan has a need for approximately six to ten intrastate charters every year, to destinations such as the Twin Cities, Duluth, the Iron Range, Red Wing and Stillwater. Bergan has used Triangle (primarily) to provide interstate service for the last 10-12 years, and wants the relationship to expand to using Triangle for intrastate charters. Ms. Bergan has found Triangle's service and the quality of its equipment to be excellent.

Approximately half of the charter bus trips arranged by Bergan are coordinated with West-Pic. In addition to operating at Thief River Falls, Bergan has arranged charters from Crookston, Red Lake Falls and Warren. The majority of the charter trips Bergan arranges are for senior citizens, and many such customers have been positively induced to book trips when they learn that Triangle is the carrier. Bergan's customers often ask "who is driving?" before booking a trip (Tape, Side 9). One feature of Triangle's buses, that they are 102" wide rather than 96" wide inside, is a major selling point to the seniors, who appreciate the extra 1.5" of hip room across each seat.

25. Regarding the Protestants, Ms. Bergan has used all of them for charter travel in the past, but prefers to use Triangle.

Ms. Bergan can remember using Bemidji Bus Lines only once, for a trip to Winnipeg to see Pope Paul VI (who died in 1978). The service was satisfactory.

Regarding Carpenter Charters, who are based in Thief River Falls, Bergan prefers not to use them on longer trips because it has found that Carpenter's equipment

is not so well-maintained as Triangle's and the smaller seats are less comfortable on long trips.

Bergan had negative experiences on two occasions when it used Lange Transport as its charter carrier in 1992. The first, in August of that year, was on a trip carrying a bank group to Winnipeg for the Folk-O-Rama festival. Lange's driver was one hour late in picking up the group in Thief River Falls, the air conditioning did not work, the driver did not know where to go and failed to follow directions. On Labor Day weekend in 1992, Bergan arranged a trip to Branson, Missouri with Lange, which trip was nearly canceled when Eugene Lange, who was to drive, suffered a back injury and could not drive several days before the trip was to leave (Tape, Sides 9, 10). Ms. Bergan offered to try to line up a driver for the bus, but Lange refused to enter into such an arrangement and Bergan had to arrange for another carrier on short notice.

26. Regarding the 1992 Bergan-Lange incidents detailed in the preceding Finding, Mr. Lange recalls that Bergan was "on and off again" regarding whether the Winnipeg trip was going so, in the interim, Lange booked himself and his other regular driver for other charters going to the popular Folk-O-Rama trip to Winnipeg, and Bergan forced him to arrange a driver on short notice when she finally decided to book a group to go to the festival. His recollection about the Branson trip over Labor Day is that he informed Ms. Bergan of his unavailability due to a bad back, but had found another driver, and she turned Lange down because Mr. Lange would not be driving.

With respect to the West Polk Homemakers' trip, Mr. Lange maintains he had swept the floor of the bus, fixed the air conditioning at Fergus Falls and that he serviced the bathroom before the trip. No complaint was made to him about dirty, smelly bathrooms or gum on the seats during the trip.

27. Protestant Carpenter Charter, Inc. is authorized to transport customers under charter from origin points in Pennington, Red Lake, Marshall, Roseau and Kittson Counties. Carpenter operates two buses (one with 49-passenger capacity, the other with 47) and one 13-passenger van for charter trips. It has been in business for 11 years, and charter transportation is its only business. Its President, Randall Carpenter, went into the bus business at the behest of Bob Bergan, co-owner of Bergan Travel in Thief River Falls. Approximately 25% of Carpenter's business is on intrastate trips, originating mostly from Thief River Falls, Warren and Red Lake Falls.

Carpenter has already lost some business it enjoyed formerly in Pennington and Red Lake Counties to Lange Transport, another Protestant, and Randall Carpenter believes the company will have to cease operations if it loses any "fair amount" of its present business to yet further competition (Tape, Side 4).

28. Protestant Jutz, Inc., d/b/a Bemidji Bus Lines, has charter authority to serve origin points from various locations in the state, including Polk County (the only one relevant here). Its customers in Polk County include the Fisher School District, Crookston's Senior Citizens Center and the University of Minnesota-Crookston's football team. At the time of the hearing, Bemidji operated a 49-passenger bus, a 47-passenger bus and a 19-passenger luxury bus for charter trips. Minnesota-Crookston was very



pleased with Bemidji's service to its football team. In addition to competing with Triangle in Polk County, Bemidji has competed with another Protestant, Lange Transport. Triangle also has competed with Bemidji for charter business in Clearwater and Beltrami Counties, but service to those counties is not sought in this Petition.

Todd Jutz, Vice President and Accounting Manager for Bemidji, planned to add two additional buses for charter service shortly after the time of the hearing (Tape, Sides 7, 8). Mr. Jutz opposes any additional grant of authority in the territories his company is authorized to serve.

29. Protestant Lange Transport is authorized to transport passengers under charter from points within a 50-mile radius of its base at Gonvick, Minnesota, and from points in Kittson, Roseau and Marshall Counties and on a restricted basis from certain other points in Polk, Hubbard and Cass Counties. Lange's restricted authority in Polk County is the only restricted authority relevant here, and that is from points in the County outside a 50-mile radius of Gonvick (basically, Crookston and the western portion of the County). From those points, Lange is restricted to operating only charters with 40% or fewer of the passengers coming from the portions of the County outside the 50-mile radius from Gonvick. It is noted that Lange, in a companion matter noted in the first paragraph of this Report, is seeking additional authority to serve all of Polk County without restriction.

Lange operates its charter business (it also has a school bus business) with two coaches, each with a 47-passenger capacity, and each equipped with television, VCR, restroom, air conditioning and card tables.

30. Lange is owned and operated by Eugene Lange, its President. His wife, Beryl Lange, and daughter also work in the business. Mr. Lange competes with Carpenter in Kittson, Roseau and Marshall Counties, and competes with Bemidji in eastern Polk County. Mr. Lange believes there is no room for "new" charter competition (Tape, Sides 6, 7). In that connection, it is noted that, until October 6, 1995, Triangle has been a competitor of Lange's in Polk County under its "incidental charter" authority. Lange is not interested in competing for charter business in the eastern 20 miles of Polk County, or in competing in East Grand Forks, but wants to compete for business in Crookston. This issue is explored in greater detail in the Lange Transport, Inc. Report, issued under separate cover as noted in the first paragraph of this Report. If the Petition is granted, Mr. Lange believes Triangle's authority will have an adverse effect on its business.

Lange employs six part-time drivers and will purchase more equipment if its business grows. Lange had not solicited business for anyone within 50 miles of East Grand Forks until it filed its own Petition (OAH Docket No. 7-3001-9618-2, TRB Docket No. CH 57484/E-94-811, Sub. 3), after which time it sought to line up supporting witnesses in Crookston.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## CONCLUSIONS

1. The Administrative Law Judge and the Transportation Regulation Board have jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was given in a timely fashion, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. From the Petitioner's, experience, knowledge of the regulations and financial condition, the Judge concludes that it is fit and able within the meaning of Minn. Rule 7800.0100, Subp. 4. The Petitioner's financial net worth and its abandonment of regular bus service between East Grand Forks and Duluth do not render it unfit or unable under the Rule or under Minn. Stat. Chapter 221.

4. The Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department of Transportation.

5. The Petitioner has proven that there is a need for the granting of authority to it to transport passengers under charter from points within a 30-mile radius of East Grand Forks and from the origin point of Thief River Falls, to all points in Minnesota, and return. It has not established the need for the granting of authority to it to transport passengers under charter from origin points between a 30-50 mile radius from East Grand Forks, except from the origin point of Thief River Falls.

6. The Protestants failed to prove that existing charter permit carriers fully and adequately meet the need for transportation of passengers under charter within a 30-mile radius of East Grand Forks or from the origin point of Thief River Falls.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Transportation Regulation Board GRANT the Petitioner, Triangle Transportation, Inc. charter carrier permit authority to

transport passengers from origin points within a 30-mile radius from East Grand Forks and from the origin point of Thief River Falls to all points in Minnesota, and return.

Dated this 20th day of October, 1995

/s/

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped

### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### MEMORANDUM

Except for testimony regarding a need to provide a significant amount of service in Thief River Falls, Triangle has not shown a specific need for the grant of additional charter carrier authority outside a 30-mile radius from East Grand Forks.

The Administrative Law Judge considers the basic argument of Protestants Lange Transport and Bemidji Bus Lines regarding a grant of authority to Triangle in Polk County, that to allow further competition in an already-crowded Polk County market would be detrimental to their existing businesses, to be misplaced. Their argument ignores the fact that Triangle, under the "incidental charter" authority it held until earlier this month, was already in the Polk County charter market and competing actively against these Protestants. Therefore, to allow Triangle to continue with such competition does not introduce a major new competitor to the field - it would more closely preserve the current existing state of competition for charter bus business in the County. It is noted also that a grant of authority as recommended above (to a radius of 30 miles from East Grand Forks) does nothing to preserve Triangle's current competitive status with Lange in Polk County, even though it preserves Triangle's ability to serve Crookston, because Lange does not have such authority to serve Crookston currently but is seeking it on a prospective basis only (in the above-noted companion case). Bemidji and Triangle competed for all of Polk County's business until October 6, 1995, but under its Petition as filed, Triangle essentially concedes the eastern portion of the County to other carriers and, if the Judge's recommendation is accepted, its authorized territory would move even further west.

If the Administrative Law Judge's recommendation is accepted, the Petitioner would be allowed to serve Warren and the rest of southwestern Marshall County (because the area is within 30 miles of East Grand Forks) and the City of Thief River Falls in Pennington County. Such a grant puts it in authorized competition with Protestants Lange and Carpenter. Lange presented no evidence of specific business activity levels in these areas, and Carpenter testified generally that Thief River Falls and

Warren (Marshall County) are key origin points for its business, 85% of which involves the provision of intrastate charter transportation. In the absence of specific evidence that the charter carrier needs of Marshall County are being met by the Protestants or other permitted or certificated carriers, the Judge will not recommend that points in Marshall County (including Warren, the county seat town) be excluded from the (30 miles from East Grand Forks) service radius he recommends for Triangle's authorized territory. In this connection, it is noted that both Mary Tiedeman of the First American National Bank in Crookston and Annette Bergan of Bergan Travel in Thief River Falls spoke of a need for charter services in Warren that they desired to be filled by Triangle.

The recommended grant of authority would not allow Triangle to serve the origin point of Red Lake Falls, the seat of Red Lake County and another "key" point for Carpenter.

As to Thief River Falls, the testimony of Bergan Travel, with its strong endorsement of Triangle and less-than-positive appraisal of the existing authorized Protestants (Carpenter and Lange), establishes a clear need for at least six to ten intrastate charter engagements per year from that community and a strong preference on the part of the supporting business that the need be met by Triangle. Except for Carpenter's evidence that it handled four intrastate charters for Bergan in 1993 and 1994, a service frequency falling short of six to ten times per year, the record does not establish with specific documentation or other evidence beyond the Protestants' opinions that Carpenter and Lange, or any other permitted charter carriers, all taken together, are meeting the need that exists for charter services in Thief River Falls.

In that connection, it is noted that Carpenter appended a specific, detailed listing of intrastate charters it has transported since January of 1993 to a Verified Statement submitted in rebuttal to the testimony of Annette Bergan. For reasons stated in a Letter-Order issued on October 11, 1995, the ALJ sustained the objection of Triangle's counsel and did not admit the Appendix to the record. The Appendix is being transmitted to the Board in a sealed envelope along with the balance of the record in this matter in the event the Board wishes to consider its contents for purposes of possible remand.

On October 6, 1995, the TRB dismissed the Order to Show Cause issued against Triangle regarding abandonment of its East Grand Forks-Duluth route at the end of last year without taking disciplinary action against the Petitioner. It was found above that Triangle abandoned the route without prior advance notice to the Board. In the opinion of the Administrative Law Judge, this fact should not affect adversely the determination of whether Triangle is "fit and able" to conduct the proposed business. If anything, the failure to notify the Board resulted from attorney error or a miscommunication between Triangle's counsel and the Board staff, and the Judge believes holding that against Triangle itself is inappropriate.

The final concern for the Judge was the financial stability of Triangle, given an initial filing showing a negative net worth and the background of having to abandon one of its regular routes. He is persuaded by Applicant's Exhibit 3 (Financial Statements) and the clarifying Affidavit of Dwight C. Anderson, the Certified Public Accountant whose firm has prepared financial statements for Triangle since the mid-1940s, that the

Petitioner is financially fit and able to conduct the operations proposed. See Findings 11-13.

RCL